

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION NO. W-4450

January 8, 2004

**R E S O L U T I O N**

**(RES. W-4450), ARROWHEAD MANOR WATER COMPANY, INC. (AMWC). ORDER AUTHORIZING THE USE OF SAFE DRINKING WATER BOND ACT FUNDS COLLECTED FROM CUSTOMERS VIA SURCHARGE, ON AN EMERGENCY BASIS, TO ENABLE AMWC TO PURCHASE WATER.**

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**SUMMARY**

By letter of John W. Richardson, the court appointed Receiver for AMWC, dated December 24, 2003, attached to this resolution as Appendix A, AMWC requests authority to use the Safe Drinking Water Bond Act (SDWBA) funds collected from customers via surcharge, on an emergency basis, to purchase water which it cannot currently provide to its customers due to severe damage to its pumps and wells caused by the wildfires that occurred in San Bernardino County in late October 2003. This resolution grants the request.

**BACKGROUND**

AMWC is a Class C water utility owned by the estate of the late Lance Johnson. In Decision (D.) 02-07-009, July 17, 2002 the Commission ordered the General Counsel to petition the Superior Court of San Bernardino County to appoint a receiver for the water system. On May 7, 2003 the Superior Court appointed John W. Richardson as the receiver. The order also established a strict protocol for collection of the SDWBA surcharge (which had been used by Mr. Johnson to defray operating expenses).

AMWC once provided service to approximately 560 customers in the unincorporated community of Cedar Glen and vicinity, one mile southeast of Lake Arrowhead, San Bernardino County. Wildfires that raged through San



Bernardino County in late October 2003, destroyed all but approximately 200 homes in the service area. The fire also destroyed much of AMWC's infrastructure, including pumping stations, storage tanks and water mains. As a result of the wildfires, AMWC has been unable to provide and deliver its own source of water supply to its customers. The only source of water available to AMWC since the fires has been through the purchase of water from the Crestline Lake Arrowhead Water Agency (CLAWA). Until the AMWC system can be repaired to the point where it can supply its customers with its own water supply, AMWC must rely solely on CLAWA as a water source.

In early December 2003, CLAWA informed AMWC in writing that unless the utility paid its outstanding water bill of more than \$10,000 owed to CLAWA by December 19, 2003, CLAWA will cease providing water to AMWC.

## **DISCUSSION**

As mentioned above, water purchased from CLAWA is the only source of water now available to AMWC. The October 2003 wildfires destroyed the homes of more than one-half the customer base of AMWC, which has seriously diminished the utility's source of revenue. Additionally, surface water is considerably more expensive than ground water. For this reason, AMWC does not have sufficient funds to pay the outstanding \$10,000 water bill being demanded by CLAWA. If the outstanding bill is not paid, CLAWA will cease providing water to AMWC and the approximately 200 AMWC customers will not have water. The only immediate source of funds available to AMWC to pay the outstanding CLAWA bill is \$40,000 in SDWBA surcharge money collected from customers that would otherwise be deposited into a trust account for payment on the SDWBA loan. John Richardson has communicated AMWC's water supply dilemma to the Department of Water Resources (DWR), who service the loan, and DWR has agreed to allow AMWC to divert the SDWBA surcharge revenue, which has not yet been deposited into the required trust fund to pay CLAWA its outstanding water bill and to undertake necessary emergency repairs.

The Water Division (Division) has reviewed AMWC's request and believes that the wildfires of October 2003 have indeed created a dire situation within the AMWC system. In view of this, the Division supports AMWC's request to be allowed, on an emergency basis, to divert SDWBA surcharge funds that have been collected from customers and not yet deposited into the required trust fund



to pay CLAWA its approximately \$10,000 outstanding bill and to undertake necessary emergency repairs.

### **NOTICE AND PROTESTS**

This resolution was mailed to the service list of D.02-07-009 on December 23, 2003. Public Utilities Code §1708 requires notice when rescinding, altering or amending a Commission order. The 30-day comment period should be shortened to 10 days as provided by § 311(g)(2) as this is an emergency situation. Parties to D.02-07-009 must protest within those ten days or they will be assumed to have stipulated to the 10-day notice period.

One set of comments, which is attached as Appendix B, was received from William J. Peters, a customer of AMWC. Mr. Peters' concerns were taken into consideration before the Division made its recommendation to approve the diversion of SDWBA surcharge funds. The Division is fully aware that funds designated for special accounts (as the AMWC SDWBA surcharge fund is) must be used for the purpose for which they were created. An emergency situation exists with AMWC, however, because of the San Bernardino wildfires of October 2003. AMWC's sole source of water is from CLAWA. If AMWC does not pay the outstanding \$10,000 water bill being demanded by CLAWA immediately, CLAWA will cease providing water to AMWC and 200 AMWC customers will not have water. If at all possible, this cannot be allowed to happen. AMWC does not have sufficient funds to pay the outstanding water bill to CLAWA. Forty Thousand Dollars (\$40,000) in SDWBA surcharge funds are available now, and DWR has agreed to allow AMWC to divert these funds, on an emergency basis, to pay the outstanding water bill and to undertake necessary emergency repairs. It is the opinion of the Division that any other option to obtain the \$10,000 would require additional time, which the utility does not have. The Division realizes that FEMA funds will eventually be available but not now. The only feasible way to insure that AMWC customers are not out of water in the immediate and near future is to divert the already available SDWBA surcharge funds on an emergency basis to pay the \$10,000 outstanding water bill. When FEMA funds or any other insurance awards become available, it can be used to replace the amount of the surcharge funds used in the current emergency. Something has to be done now.

### **FINDINGS**

1. AMWC is a class C utility that is now in receivership.



2. The wildfires that occurred in San Bernardino County in late October 2003 destroyed all but approximately 200 homes in the AMWC service area seriously diminishing the utility's source of revenue.
3. The wildfires also destroyed much of AMWC's infrastructure including pumping stations, storage tanks, and water mains resulting in the utility being unable to produce its own water sources and deliver it to its customers.
4. At the present time AMWC is totally reliant on CLAWA as a source of water supply.
5. CLAWA has informed AMWC that unless the utility pays the outstanding water bill in excess of \$10,000 that is owed to CLAWA, the agency will cease providing water to AMWC.
6. AMWC does not have funds available at this time to pay the outstanding CLAWA bill.
7. If CLAWA ceases providing water to AMWC, the utility customers will have no water in the immediate and near future.
8. The only immediate source of funds available to AMWC to pay the outstanding CLAWA bill is SDWBA funds collected from customers via surcharge that would otherwise be deposited in a trust account for payment on an existing SDWBA loan.
9. The emergency situation in this matter justifies shortening the notice and comment period required by Public Utilities Code Section 1708.
10. DWR has agreed to allow AMWC to divert SDWBA surcharge revenue, which has not yet been deposited into the trust fund account, to pay CLAWA the outstanding water bill and to undertake necessary emergency repairs.
11. To insure that AMWC customers continue to have water in the immediate and near future, AMWC should be allowed, on an emergency basis, to divert SDWBA surcharge funds collected from customers that have not yet been deposited the trust fund for payment on an existing SDWBA loan to pay CLAWA its outstanding water bill and to undertake necessary emergency repairs.

**THEREFORE IT IS ORDERED THAT:**

1. Arrowhead Manor Water Company, Inc. is authorized, on an emergency basis, to divert Safe Drinking Water Resources surcharge funds collected from customers that have not yet been deposited in the special trust account for



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payment on an existing SDWBA loan, to pay its outstanding bill owed the Crestline Lake Arrowhead Water Agency and to undertake necessary emergency repairs.

2. Due to the emergency situation in this matter, the notice and comment period shall be shortened to 10 days pursuant to Public Utilities Code Section 1708.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on January 8, 2003; the following Commissioners voting favorably thereon:

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WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners



January 8, 2004

## APPENDIX A

**JOHN W. RICHARDSON & ASSOCIATES**  
TRUSTEE IN BANKRUPTCY  
RECEIVER

John W. Richardson  
Deborah L. Richardson  
Carol Welsh

December 24, 2003

Cleveland Lee, Esq.  
California Public Utilities Commission  
505 Van Ness Ave  
San Francisco CA 94102

**Subject: Arrowhead Manor Water Co. Inc.,**

Dear Mr. Lee:

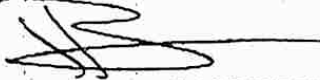
As you know, I was appointed as the Receiver for Arrowhead Manor Water Co., Inc. ("Arrowhead") on or about May 7, 2003 by the San Bernardino Superior Court.

Since that time I have segregated the funds collected from customers attributed to the SWDBA loan. These funds are not due to be deposited into the trust account until early 2004. However, I am requesting authorization to utilize these funds due to the devastating fires in October of this year which severely damaged or destroyed most of Arrowhead's infrastructure. Almost two thirds of our customers have lost their homes, thus Arrowhead's income has dropped dramatically and there are insufficient funds to pay for ongoing water costs, emergency repairs and other day to day operations.

Because of the damage to the water delivery system, Arrowhead has had to purchase all of its water supply from Crestline Lake Arrowhead Water Agency ("CLAWA"). A payment was made to CLAWA in the amount of \$10,753.15 on December 19, 2003 or no further water would be available to Arrowhead. Further outstanding bills totaling \$15,303.43 are still due and payable to CLAWA.

Arrowhead is expecting payment of insurance proceeds during the first quarter of 2004 and would suggest that a portion of the proceeds be utilized to replenish the SWDBA loan funds, which I am requesting authorization to utilize in the interim. Without the use of the approximately \$40,000 in SWDBA funds, I do not see how Arrowhead can continue to operate which would place further hardship on those customers who survived the fires.

Sincerely yours,



JOHN W. RICHARDSON, RECEIVER

2941 Park Avenue, Suite H • Soquel, CA 95073  
Phone: 831/475-2202 • Fax: 831/475-1213

(End of Appendix A)



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December 29, 2003

California Public Utilities Commission  
Water Utilities Branch, room 3106  
505 Van Ness Avenue  
San Francisco, Ca 94102

ref: Arrowhead Manor Water Company Resolution W-4450

Comment on Draft Resolution

I am William J. Peters, customer of Arrowhead Manor Water Company with service at 209 Glen Avon Dr, Cedar Glen, Ca 92321.

Please accept this letter as a comment to the Arrowhead Manor Water Company Draft Resolution W-4450 requesting authority from the CPUC to authorize the use of Safe Drinking Water Bond Act funds collected from customers via surcharge, on an emergency basis, to enable AMWC to purchase water.

Court-appointed Receiver for AMWC, John W. Richardson, has applied to the Commission for authority to divert SDWBA funds, collected from company customers, to pay CLAWA for purchased water and to undertake emergency repairs.

This action is not allowed under Order No. 4, Decision 02-07-009, dated July 17, 2002.

Recitation of Order No. 4, D 02-07-009, July 17, 2002

Order No. 4 provides that:

This ordering paragraph does not relieve Arrowhead of any obligation to DWR arising under their SDWBA loan contract, including its obligations to repay principal, interest, and penalty amounts. This ordering paragraph also does not convey to Arrowhead a right to retain for itself any amounts currently in its SDWBA trust account.



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Other Cogent Points

Res. W-4450 violates Commission policy and judicial case law.

Judge McVicar in his Decision found that diversion of SDWBA funds for purposes other than the uses than specified in the loan contract "is directly contrary to the Commission's long-standing policy and judicial case law which prohibits this form of retroactive rate making....The diversion of funds from a specially created program for unauthorized purposes violates Commission decisions and mandates. Funds designated for special accounts must be used for the purpose for which they were created. Arrowhead, Judge McVicar said, is merely a fiduciary conduit for the collection and disbursement of the surcharge revenues under the SDWBA loan contract.

Neither DWR nor CPUC can grant authority in use of customer surcharge.

"This loan is between AMWC and the DWR, not the CPUC", the company stated in arguments before the Administrative Law Judge during the OII. The DWR's attorney informed Arrowhead that "The Commission doesn't have that kind of authority over DWR to instruct us what to do with our loan program."

McVicar writes: "Regardless of the physical commingling of surcharge revenues and the utilities operating revenues, surcharge funds have, at no time, belonged to Arrowhead. Use of SDWBA money, other than in the manner prescribed in the loan contract, constitutes a misappropriation of funds."

Amendment A-4(A-5?) of the SDWBA includes interest penalties; Reserve Funding Requirements

The amendment specifies a rate of interest of 7.4%. Other provisions of the Amendment include:

1. 1% per month (12% apr) for delinquent payment of loan;
2. Reserve fund must contain one semiannual payment by Jan 1, 2005 (\$45,171.77). Penalties for failure are unknown.





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Reduced customer base heavily penalized by Amendment A-4.

Section B-2 of the 1981 DWR loan agreement specifies that "If, for any reason, gross revenues prove insufficient to service the loan contract, Supplier [AMWC] agrees to raise sufficient funds through increased user charges or assessments to meet loan payment and to operate and to maintain the project."

Section B-2 requires collection of \$91,443.54 whatever the number of customers. The Draft Resolution reports 560 customers prior to the Old Fire and only 200 remaining. Prior to the fire, 560 customers supplied \$163.29 each in years past. But, 200 customers will each be required to pay \$457.22 each per year without added assessments. Reserve Fund requirements to build the trust account no later than January 1, 2005 calls on each of the 200 customers of the utility to pay \$685.83 during the year 2004. Any interest penalties will be additional costs to the customer.

The Resolution will weaken the community beyond reckoning.

Solutions

Section 10 of the 1981 DWR contract requires AMWC to apply and make reasonable efforts to secure Federal assistance [for the project for which the loan was granted]. That condition is as applicable today as it was at the start of the project and no less enforceable today. The Receiver, as named operator of the company must be encouraged to comply with Section 10.

FEMA, Community Block Grant program funding and monies may become available from the Federal, state and county governments. Following the October fire, most have pledged their help to Cedar Glen. San Bernardino County's Cedar Glen Rebuilding and Reconstruction Task Force and Supervisor Dennis Hansberger are aware of water system difficulties. Pledges of assistance, though little action, has occurred. Local banks may even be a source of emergency business funding. A loan of \$10,000, the amount being sought by AMWC, though not specified in the ordering

WJP

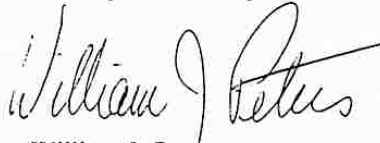


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paragraphs, at current interest rates--substantially lower than the 7.4% charged on the SDWBA loan--in conjunction with grants could be a blessing to Cedar Glen.. By not taking action to utilize the SDWBA trust fund money may also by-pass the DWR interest penalty of 12% per annum, amounting to a draconian total of 19.4% apr.

The need is undeniable. The method proposed in Draft Resolution W-4450 is unacceptable. I request the Commission to deny this application.



William J. Peters  
245 West Wistaria Ave  
Arcadia, Ca 91007  
(626) 446-7853





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CERTIFICATE OF SERVICE

I CERTIFY THAT I HAVE BY MAIL THIS DAY SERVED A TRUE COPY OF COMMENT ON DRAFT RESOLUTION W-4450 OR THEIR ATTORNEYS AS SHOWN ON THE ATTACHED LIST.

DATED DECEMBER 30, 2003, AT ARCADIA, CALIFORNIA

A handwritten signature in black ink, appearing to read "William J. Peters", is written over a horizontal line.



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SERVICE LIST - DRAFT RESOLUTION NO. W-4450 (Arrowhead Manor Water Co., Inc.)

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